THE
AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA
DEPARTMENT OF LAW.

SUBSCRIPTION PRICE, $3.00 PER ANNUM. SINGLE COPIES, 35 CENTS.

Edited by members of the Department of Law of the University of Pennsylvania under the supervision of the Faculty, and published monthly for the Department by BOYD L. SPAHR, Business Manager, at S. W. Cor. Thirty-fourth and Chestnut Streets, Philadelphia, Pa. Address all literary communications to the EDITOR-IN-CHIEF; all business communications to the BUSINESS MANAGER.

EMOTIONAL INSANITY.—*Cawley* v. *State,* 32 Southern, 227 [Supreme Court of Alabama] 1902. Insanity in its various legal and medical phases has been so largely the subject of discussion and so many different doctrines have been deduced therefrom, that no matter what branch of it is considered, the truth of Balfour Browne's aphorism—"One's wheels run in the ruts"—is obvious. And no exception to the rule is presented in the case of "emotional insanity" which has been and remains as fruitful in discussion as it has been fruitless in uniform results.

In the principal case, *Cawley* v. *State* (*supra*), the question was again raised, by the request of the counsel for the prisoner to charge as follows: "(h) Even if the jury should believe from the evidence that the defendant, at the time of the alleged killing of Brady Jones, had the capacity to distinguish between right and wrong, yet, if the jury should believe from the evidence that the defendant was moved to action by an insane impulse controlling his will or judgment, then he is not guilty of the offence charged." In refusing so to charge the Court said: "Charge

'h' is in conflict with the principle, often declared by this court, that emotional insanity as a defence 'finds no justification or support in our jurisprudence.' *Walker* v. *State*, 91 Ala. 76, 1890, 9 South. 87; *Parsons* v. *Same*, 81 Ala. 577, 1886; *Boswell* v. *Same*, 63 Ala. 307, 1879." Nothing else is said pertaining to the subject in hand. As the result of a close examination of the authorities cited by the Court, it is submitted that the law of Alabama as laid down in these cases is here too broadly stated.

Let us examine the cases chronologically. (1) In *Boswell* v. *State*, 63 Ala. 307, 1879, we read: "The senses and mental powers remaining unimpaired, that which is sometimes called 'moral' or 'emotional insanity,' savors too much of a seared conscience, or atrocious wickedness, to be entertained as a legal defence." But notice here that the Court does not merely say "emotional insanity," but emotional insanity with this limitation, "the senses and mental powers remaining unimpaired." With that limitation in mind, we pass (2) to *Parsons* v. *State*, 81 Ala. 577, 1886, where in one of the ablest opinions that has been pronounced on insanity, Somerville, J., says: "In what we say we do not intend to give countenance to acquittals of criminals, frequent examples of which have been witnessed in modern times, based on the doctrine of moral or emotional insanity, *unconnected with mental disease*, which is not yet sufficiently supported by psychology, or recognized by law as an excuse for crime. . . . A mere moral or emotional insanity, so called, *unconnected with disease of the mind*, or irresistible impulse resulting from mere moral obliquity, or wicked propensities and habits, is not recognized as a defence to crimes in our courts." (3) *Walker* v. *State*, 91 Ala. 76, 1890, cites, without discussion, the law on emotional insanity laid down in the foregoing cases, as being the approved result of the decisions of the state. Noting now the parts of Judge Somerville's opinion, which for sake of convenience are here italicized, does it not seem to be strongly implied that there are two sorts of emotional insanity, scil: (a) where the senses and mental powers remain unimpaired, or, as it has otherwise been expressed, where such emotional insanity is "unconnected with mental disease," and (b) where it is connected with disease of the mind? Mr. Wharton, whom the Alabama courts in these cases cite with evident approval, adverts to this distinction as an important one in determining criminal responsibility. In his treatise on *Criminal Law* (10th ed., 1890, § 33) he defines "moral insanity"—which the Alabama courts have taken to be synonymous with "emotional insanity"—"to consist of insanity of the moral system coexisting with mental sanity," and, as thus defined, to have no support "either in psychology or law." But in the treatise on Medical Jurisprudence which he wrote in conjunction with Dr. Stillé, he says: "Moral insanity is a defence to an indictment, when it is connected

with and depends on a cognate mental derangement. . . ." (*Wh. and St. Med. Jur.*, 2d ed., 1860, § 61.) To justify, therefore, the conclusion reached by Tyson, J., in *Cawley* v. *State* (*supra*), the emotional insanity that "finds no justification or support in our jurisprudence" can mean only such emotional insanity as is "unconnected with disease of the mind." If it means more than this, he adduces no argument or authority to fortify that view. If he means merely to abide by authorities, as undoubtedly he does, then, it is repeated, his language is too broad.

The text-writers on the subject of criminal insanity recognize no valid distinction between such emotional insanity as we have been discussing and "irresistible impulse." Turning again to Wharton, *Crim. Law*, 10th ed., 1890, §§ 44, 45, we read of the irresistible impulse of a sane person which confers responsibility on him, and that of an insane man to whom no crime can be imputed. The same relation is therefore to be found between these two, as was pointed out above in the case of emotional insanity connected, and unconnected, with coexisting disease of the mind. While some authorities have treated of irresistible impulse under emotional insanity, we may be sure even then that our subject has not been departed from, though it may indeed be thereby restricted. Irresistible impulse is, perhaps, a better known phrase, and most of the United States have taken a stand one way or the other as regards it, not being always too careful, however, to distinguish the cases where on the one hand it coexists with sanity, and on the other with mental disease.

This general form of monomania was first carefully discussed in this country by Chief Justice Shaw, of Massachusetts, in 1844, in the case of *Com.* v. *Rodgers*, 7 Metc. 500. And since that time great strides have been taken towards the proper administration of justice. The conservatism of most of the courts is shown in the cautions laid down by the judges as regards the proper scope of the doctrine. Even in Pennsylvania, which is claimed to have gone farther than most jurisdictions, Chief Justice Gibson has said: "The doctrine which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance. . . . To establish it as a justification in any particular case, it is necessary either to show, by clear proofs, its contemporaneous existence evinced by present circumstances or the existence of an habitual tendency developed in previous cases, becoming in itself a second nature." *Com.* v. *Mosler*, 4 Barr, 266, 1846. With this whole doctrine of the "unseen ligament pressing on the mind," Stone, J., in *Boswell* v. *State*, the Alabama case cited above, is entirely at odds. In his endeavor to enforce what all the courts recognize, viz: that one not suffering from a diseased mind is not excused though he has wrought himself

into a highly excited emotional state, through "anger, jealousy, revenge, and kindred evil passions," he swings to the other extreme and declares with great earnestness that irresistible impulse amounts almost, if not quite, to "the synonym of that highest evidence of murderous intent known to the common law: a heart totally depraved, and fatally bent on mischief. But the learned judge failed to note the limitation in *Com.* v *Mosler* that the irresistible impulse must coexist with extreme mental instability, amounting to a form of disease. Later Pennsylvania cases have thus regarded the doctrine, and carefully distinguish it from "acts of reckless frenzy." *Coyle* v. *Com.*, 100 Pa. 578, 1882. See also *Taylor* v. *Com.*, 109 Pa. 270, 1885, where it was said "No mere moral obliquity of perception will protect a person from punishment for his deliberate act."

In Iowa a thoroughly just line of decision has been established, and one consistent with the authorities, legal and medical, and with sound policy. In *State* v. *Felter*, 25 Iowa, 68, 1868, the rule is thus laid down: "If there is an unsound condition of the mind—that is, a diseased condition of the mind, in which, though a person abstractly knows that a given act is wrong, he is yet, *by an insane impulse*, that is, an impulse proceeding from a diseased intellect, irresistibly driven to commit it,—the law must modify its ancient doctrines and recognize the truth and give to this condition when it is satisfactorily shown to exist, its exculpatory effect." In *State* v. *Stickley*, 41 Iowa, 232, 1875, *State* v. *Felter* (*supra*), is expressly ratified. So also in *State* v. *Mewherter*, 46 Iowa, 88, 1877, which states the rule of *Felter's Case*, adding, however, cautions to be observed in its application. The doctrine thus laid down acknowledging irresistible impulse connected with mental disease to be a valid defence to a crime charged, is in accord with the best medical authorities on the subject. See *Wh. and St. Med. Jur.*, § 61, 2d. ed., 1860; Balfour Browne's *Med. Jur. of Ins.*, p. 166 (ed. of 1871).

One thing is certain, that in the administration of these diverse rules of accountability, injustice is being meted out somewhere; in some jurisdictions men are escaping who deserve punishment, and in others men are being punished who should receive medical attention in the asylums provided for the insane.

"Caution should guide judges, counsel, and juries in their investigations of insanity . . . they are liable to err. . . . We think ourselves wiser upon this subject than were our forefathers; undoubtedly we are; but there is wisdom to be acquired . . . and until we learn truly to distinguish between sanity and insanity, some must on the one hand, suffer as criminals when they ought to be under treatment for disease; and, on the other hand, persons truly guilty will sometimes escape punishment under the plea of insanity." *Bishop's New Crim. Law*, 8th ed., 1892, § 390. *B. H. L.*